

IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

COMPLETE STYLE OF THE CASE:

GARY GENTRY,

Respondent,

v.

ORKIN, LLC, et al.,

Appellants.

DOCKET NUMBER WD79121

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

Date: May 31, 2016

Appeal from:

Jackson County Circuit Court
The Honorable Jennifer M. Phillips, Judge

Appellate Judges:

Division One: Lisa White Hardwick, Presiding Judge, Cynthia L. Martin and Gary D. Witt, Judges

Attorneys:

Kirk Holman and Kenneth D. Kinney, Kansas City, MO, for respondent.

Trina R. Le Riche and Adam T. Pankratz, Kansas City, MO, and Jon M. Gumbel (*pro hac vice*), Atlanta, GA, for appellants.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

GARY GENTRY,

Respondent,

v.

ORKIN, LLC, et al.,

Appellants.

WD79121

Jackson County

Before Division One: Lisa White Hardwick, Presiding Judge, Cynthia L. Martin and Gary D. Witt, Judges

Orkin, LLC, and one of its branch managers, Danny Biron, appeal the circuit court's order denying their motion to compel arbitration of former Orkin employee Gary Gentry's retaliation claim against them. Orkin and Biron contend the court should have compelled arbitration because there is an enforceable arbitration agreement between the parties, the agreement applies to Gentry's claim, and they have not waived their right to compel arbitration.

AFFIRMED.

Division One holds:

The circuit court did not err in denying Orkin and Biron's motion to compel arbitration. Orkin and Biron waived their claim of a right to arbitrate, as they had knowledge of their purported right to arbitrate at the time Gentry's petition was filed; they acted inconsistently with that purported right by litigating the case for over a year

without mentioning arbitration; and Gentry established that he was prejudiced by their delay.

Opinion by: Lisa White Hardwick, Judge

May 31, 2016

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